



# THIRD ENHANCED FOLLOW-UP REPORT OF GUATEMALA



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## ***GUATEMALA: Third Enhanced Follow-up Report***

### **I. INTRODUCTION**

1. The mutual evaluation report (MER) of Guatemala was adopted in August 2016. This follow-up report analyses the progress made by Guatemala in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is shown. This report analyses also the progress of Guatemala in the implementation of the new requirements related to FATF Recommendations that were amended since the adoption of the MER: Recommendations 5 and 7. In general, the expectation is that countries will have addressed most of their technical compliance deficiencies, if not all, before the end of the third year since the adoption of its MER. This report does not address the progress of Guatemala in improving its effectiveness. A subsequent follow-up evaluation will analyse the progress in improving its effectiveness, which will eventually result in a new rating of Immediate Outcomes.

### **II. FINDINGS OF THE MUTUAL EVALUATION REPORT**

2. The MER rated Guatemala as follows in relation to technical compliance:

**Table1. Technical compliance ratings, August 2016.**

<b>R 1.</b>	<b>R 2.</b>	<b>R 3.</b>	<b>R 4.</b>	<b>R 5.</b>	<b>R 6.</b>	<b>R 7.</b>	<b>R 8.</b>	<b>R 9.</b>	<b>R 10.</b>
LC	C	LC	LC	PC	PC	PC	LC	C	LC
<b>R 11.</b>	<b>R 12.</b>	<b>R 13.</b>	<b>R 14.</b>	<b>R 15.</b>	<b>R 16.</b>	<b>R 17.</b>	<b>R 18.</b>	<b>R 19.</b>	<b>R 20.</b>
C	LC	C	PC	PC	PC	PC	C	C	LC
<b>R 21.</b>	<b>R 22.</b>	<b>R 23.</b>	<b>R 24.</b>	<b>R 25.</b>	<b>R 26.</b>	<b>R 27.</b>	<b>R 28.</b>	<b>R 29.</b>	<b>R 30.</b>
C	PC	PC	LC	LC	C	LC	PC	C	C
<b>R 31.</b>	<b>R 32.</b>	<b>R 33.</b>	<b>R 34.</b>	<b>R 35.</b>	<b>R 36.</b>	<b>R 37.</b>	<b>R 38.</b>	<b>R 39.</b>	<b>R 40.</b>
C	C	C	C	PC	C	LC	LC	LC	LC

*Note:* There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC).

Source: Mutual Evaluation Report of Guatemala, August 2017 [www.gafilat.org]

3. In the light of these results, GAFILAT placed Guatemala in the enhanced follow-up process<sup>1</sup>. The Executive Secretariat of GAFILAT assessed the request of Guatemala of a new technical compliance rating and developed this report.

4. Section III of this report summarises the progress made by Guatemala in improving technical compliance. Section IV presents the conclusion and a table that shows re-rated Recommendations.

<sup>1</sup> The regular follow-up is the default monitoring mechanism for all countries. The enhanced follow-up process is based on the FATF traditional policy that approaches members with significant (technical compliance or effectiveness) deficiencies in their AML/CFT systems, and it implies a more enhanced follow-up process.

### III. OVERVIEW OF THE PROGRESS MADE TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises the progress made by Guatemala to improve its technical compliance by:

- a) Approaching its technical compliance deficiencies as identified in the MER, and
- b) Implementing new requirements in the cases where FATF Recommendations were amended since the adoption of the MER: R.5 and R.7.

#### 3.1 Progress in approaching technical compliance deficiencies identified in the MER

6. Guatemala has made progress in the approach to its technical compliance deficiencies identified in the MER in relation to the following Recommendations:

- Recommendations 15 and 16, originally rated as PC.

7. As a result of this progress, Guatemala was re-rated in relation to Recommendations: R.15 and R.16.

#### *Recommendation 15 (originally rated PC - Re-rated C)*

8. The MER of Guatemala established as a deficiency that the regulations did not directly referred to the use of new technologies or developing technologies for new or existing products and it was not clear that the current legal framework establishes the need to analyse the ML/TF risks for the development of new products or practices, including new delivery mechanisms and the use of new technologies, or that it is necessary to analyse or mitigate such risks before the launching or offering of such product or service.

9. In relation to the deficiency identified in the MER, Guatemala, based on its “National Strategic Plan against ML/TF/FPWMD” is in the final stage of the update of its ML/TF National Risk Assessment (NRA) based on the World Bank tool for the purpose of analysing the ML/TF threats and vulnerabilities. The tool of the World Bank includes a module for the analysis of risk specially focused on financial inclusion, where the risk of new products and new business practices are analysed. An analysis was performed on the risks posed to the country by: E-wallet, new product in the funds transfer sector, Gramen loans, new product for banks, and crypto-currencies and *Fintech*. Based on the aforesaid, Guatemala is considered to have addressed the reported deficiency.

10. Based on IVE Official Letters No. 3955-2015, 4125-2015 y 4284-2015, 4282-2015, 4362-2015, 13-2016, 14-2016, 4796-2016 y 4797-2016, through which financial reporting institutions (RI) are required to effectively apply the ML/TF Risk-Based Management Guide, from the date of reception of the corresponding files. The aforementioned Guide sets forth that RI should perform a ML/TF risk analysis in relation to the development of new products and services, including new funds delivery mechanisms and the use of new technologies, developing technologies, or new payment methods, for both, new and existing products and services. Additionally, it is set forth that RI should perform a ML/TF risk analysis before the launching of new products, services and before using new or developing technologies, and they should adopt corresponding measures to prevent, control, or mitigate the risks that may arise. Based on the aforesaid, Guatemala is considered to have addressed the reported deficiency.

11. Based on the analysis of the information provided by Guatemala, the deficiencies identified in the MER for Recommendation 15 have been overcome. Therefore, it is suggested that the rating should be upgraded to **Compliant**.

***Recommendation 16 (originally rated PC - Re-rated LC)***

12. The MER of Guatemala established as a deficiency of criterion 16.1 that the threshold established (USD 2,000) was higher than the requirement of the FATF Standard. Additionally, it was established that there seemed to be no regulatory provisions to address criteria 16.3, 16.4, 16.8, and 16.18.

13. In relation to the deficiency of criterion 16.1, through IVE Official Letter No. 388-2017, 463-2017, 413-2017, 1329-2017 and 1330-2017, Guatemala has made the necessary amendments to reduce the threshold for wire transfers to USD 1,000, and therefore the deficiency is considered to have been overcome.

14. In relation to criterion 16.3, IVE Official Letter No. 388-2017, 463-2017, 413-2017, 1329-2017, and 1330-2017 set forth the requirements for the electronic filing of monthly reports of funds transfers over USD 300. Additionally, they set forth that the information to be included in the file for the transfer of funds (name of originator and beneficiary, and account number of originator and beneficiary, among others) should be kept and made available to the Special Verification Intendence (IVE) upon request, even if it should not be reported based on the established threshold. Therefore, it is understood that in the case of transactions under the established threshold, the information should still be requested to be forwarded to the IVE. Based on the aforesaid, it is considered that criterion 16.3 has been overcome.

15. In relation to the deficiency of criterion 16.4, through IVE Official Letter No. 388-2017, 463-2017, 413-2017, 1329-2017, and 1330-2017 that set forth the requirements for the electronic filing for the monthly report of funds transfers, it is established that, in all cases, RI should establish and apply specific measures to know and identify their customers, as well as to properly verify their identity, which should be performed through the appropriate legal means. Moreover, it is set forth that RI should ensure and guarantee the truthfulness, quality and reliability of the information contained in the fund transfer electronic file. Furthermore, IVE Official Letter No. 1275-2016 on the specific measures for remittance services sets forth the obligation of RI to implement necessary mechanisms to verify the information provided by customers, which should be recorded through the means considered appropriate, based on the policies adopted for such purpose, as long as it can be verified by the IVE. Therefore, given that in any case information contained in the electronic file should be verified, it is considered that criterion 16.4 has been overcome.

16. In relation to the deficiency of criterion 16.8, based on IVE Official Letter No. 1275-2016 applicable to RI that provide remittance services, it is set forth that the service should not be rendered to persons who do not provide all the requested information and documents, including the information contained in the fund transfers electronic file (form IVE-TF-21, which details all information corresponding to the ordering institution based on R.16). Therefore, the requirements of this criterion for those who provide remittance services are complied with. However, said obligation is not established for other FI. Consequently, criterion 16.8 is considered to be partially compliant.

17. In relation to criterion 16.18, pursuant to IVE Official Letter No. 261-2016 and 262-2016, it is set forth that RI should check against their databases and other records, if among the customers, users or persons they perform businesses with or sign into property or services contracts, including

funds transfers, there are matches with the database of designated persons and entities by the UNSC for terrorist financing and proliferation, and in case a match were found, proceed to the immediate freezing of assets. Based on the aforesaid, criterion 16.18 is considered compliant.

18. Based on the analysis of R.16, the progress made by Guatemala in relation to compliance with criteria 16.1, 16.3, 16.4, and 16.18 rectify the deficiencies identified in the MER. However, criterion 16.8 is partially compliant. Upon making a general assessment of compliance, it is considered that the remaining deficiency is minor. Therefore, it is suggested that the rating of Recommendation 16 should be upgraded to **Largely Compliant**.

### **3.2 Progress on Recommendations that were amended since the adoption of the MER**

19. Since the adoption of the Guatemalan MER, the FATF amended Recommendations 5 and 7. This Section considers compliance by Guatemala with the new requirements.

#### ***Recommendations 5 and 7 (originally rated as PC)***

20. Guatemala has been working on the bill of “Law for the Updating and Strengthening of the Legal Framework for the Prevention, Control, and Suppression of Financial Crimes.” Guatemala has been performing multiple working sessions with authorities in charge of the supervision and issuance of prudential regulations with the purpose of discussing and strengthening the project and adjusting it legally before it is forwarded again to competent authorities to be officially submitted in the Congress of the Republic as a bill of law. To date, in addition to the deficiencies identified in the IEM, the new requirements of R. 5 (criterion 5.2bis) and the update of the RCSNU in R.7 are pending application in Guatemala.

### **3.3 Brief summary on the progress made on other Recommendations rated NC/PC**

21. Guatemala also showed progress on Recommendations 14, 17, 22, 23, 28 and 35. Mainly, the progress made in relation to these Recommendations is related to the bill of “Law for the Updating and Strengthening of the Legal Framework for the Prevention, Control, and Suppression of Financial Crimes” and with the bill of law 4294, on the Law that regulates games of chance, which is in the Congress of the Republic of Guatemala, with a favourable decision with amendments from the Economy and Foreign Trade Commission. It was approved in its third reading and it is only pending for final debate by article by said legislative body.

## **IV. CONCLUSION**

22. In general, Guatemala has been making important progress in relation to addressing the technical compliance deficiencies identified in its MER and has been re-rated in relation to Recommendations 15 and 16 to Compliant and Largely Compliant, respectively. Moreover, it has shown progress in Recommendations 5, 7, 14, 17, 22, 23, 28 and 35.

23. In general, based on the progress made by Guatemala since the adoption of its MER, its technical compliance with FATF Recommendations was re-rated as follows:

**Table 2. Technical compliance ratings, July 2018.**

<b>R 1.</b>	<b>R 2.</b>	<b>R 3.</b>	<b>R 4.</b>	<b>R 5.</b>	<b>R 6.</b>	<b>R 7.</b>	<b>R 8.</b>	<b>R 9.</b>	<b>R 10.</b>
LC	C	LC	LC	PC	PC	PC	LC	C	LC
<b>R 11.</b>	<b>R 12.</b>	<b>R 13.</b>	<b>R 14.</b>	<b>R 15.</b>	<b>R 16.</b>	<b>R 17.</b>	<b>R 18.</b>	<b>R 19.</b>	<b>R 20.</b>
C	LC	C	PC	<b>C</b>	<b>LC</b>	PC	C	C	MC
<b>R 21.</b>	<b>R 22.</b>	<b>R 23.</b>	<b>R 24.</b>	<b>R 25.</b>	<b>R 26.</b>	<b>R 27.</b>	<b>R 28.</b>	<b>R 29.</b>	<b>R 30.</b>
C	PC	PC	LC	LC	C	LC	PC	C	C
<b>R 31.</b>	<b>R 32.</b>	<b>R 33.</b>	<b>R 34.</b>	<b>R 35.</b>	<b>R 36.</b>	<b>R 37.</b>	<b>R 38.</b>	<b>R 39.</b>	<b>R 40.</b>
C	C	C	C	PC	C	LC	LC	LC	LC

*Note:* There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC).

24. Guatemala will continue in the enhanced follow-up process and will continue to report to GAFILAT on the progress made to strengthen its implementation of AML/CFT measures.